

REMARKS

Claims 7 and 15 have been amended by this paper. No new matter has been introduced by the amendments.

Claims 7 and 15 have been rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Claims 7 and 15 have been amended to remove the term “essentially,” thereby obviating the rejections.

Claims 1-17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,268,189 to Doerter in view of U.S. Patent No. 4,840,805 to Sugisawa et al. The rejections are respectfully traversed.

The Doerter reference discloses a process for packing shellfish, such as crab, in a container. In particular, as shown in Fig. 1, the process includes packing the shellfish in the container, (2) filling the container with a carrageenan/water mixture such that “[t]he mixture fills the container and effectively forces any air from the container, leaving only shellfish and the carrageenan mixture,” col. 3, ll. 8-10, (3) hermetically sealing the container, (4) sterilizing or pasteurizing the container and (5) cooling the container.

The Doerter reference makes no mention of “adjusting a volume of air within said packaging vessel to obtain an air to crabmeat ratio such that undetected anaerobic bacterial growth is prevented,” as required by the pending claims of the present application. To the contrary, the Doerter reference teaches away from such an “adjusting” step and expressly proclaims that “[n]o special care need be taken to pack the product tightly or to eliminate air from the package.” Col. 2, ll. 40-41.

The Sugisawa et al. reference discloses a process for packing fish (not crabmeat) in a pouch. In particular, the Sugisawa reference discloses packing dried, broiled fish in a pouch, vacuum sealing the pouch to achieve an air content in the pouch of 25 percent or less and sterilizing the pouch. At col. 3, ll. 9-16, the Sugisawa et al. reference cites (1) improved heat sterilization, (2) preventing the flow of drips and (3) reduced breaking of the fish meat as the reasons for removing air during the vacuum packing process.

Thus, the Sugisawa et al. reference makes no mention of packaging a crabmeat product, let alone a pasteurized crabmeat product. Furthermore, like the Doerter reference, the Sugisawa

et al. reference makes no mention of adjusting a volume of air in the pouch to prevent anaerobic bacterial growth.

It is axiomatic that rejections under § 103 of the Patent Act require that the Office action establish a *prima facie* case of obviousness by meeting three basic criteria. First, there must be some suggestion or motivation to combine reference teachings. MPEP § 2143.01. Second, there must be a reasonable expectation of success. MPEP § 2143.02. Finally, the references, when combined, must teach each and every limitation of the pending claims. MPEP § 2143.03.

It is submitted that neither the Doerter reference nor the Sugisawa et al. reference teaches adjusting the air content in a packaging vessel packed with crabmeat such that anaerobic bacterial growth is prevented. Rather, as discussed above, the Doerter reference teaches displacing all air in the container with a gel material, while the Sugisawa et al. reference teaches the use of fish (not crabmeat) and a sterilization process (not a pasteurization process) and, therefore, is not concerned with anaerobic bacterial growth. Therefore, it is submitted that the Examiner's proposed combination of the Doerter and Sugisawa et al. references fails to teach each and every limitation of the pending claims of the present application.

Furthermore, it is also submitted that the Doerter reference teaches away from the method and package claimed in the present application because, as discussed above, the Doerter reference teaches the removal of all air from the package and states that "no special care need be taken" to remove air during the packaging process because the air will ultimately be displaced by the carrageenan gel. Therefore, it is submitted that one skilled in the art would not be motivated to make the Examiner's proposed combination of the Doerter and Sugisawa et al. references.

Still furthermore, it is submitted that even if the Examiner's proposed combination is made, there is no reasonable expectation of success. In particular, it is submitted that none of the prior art references cited in the Office action suggest that a process for preparing a sterilized packaged fish product (i.e., the Sugisawa et al. process) may be successfully combined with a process for packaging shellfish in a carrageenan gel (i.e., the Doerter process). To the contrary, the Doerter processes displaces all air from the container with a carrageenan gel, col. 3, ll. 8-10, while the Sugisawa et al. process vacuum packs the container to an air content of less than 25 percent, col. 3, 9-11. Therefore, it is submitted that the Doerter and Sugisawa et al. references are most likely not compatible with each other and certainly do not present a reasonable

expectation of success.

Accordingly, it is submitted that the Office action fails to establish a *prima facie* case of obviousness and withdrawal of the rejections of claims 1-17 in view of the Doerter and Sugisawa et al. references is respectfully requested.

Claims 1-17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Pub. No. 2002/0061412 to Ueyama et al. in view of the Sugisawa et al. reference. The rejections are respectfully traversed.

The Ueyama et al. reference discloses a heat-shrinkable multilayer film for packaging, among other things, foods having projections (e.g., crabs), fish meat and other marine products. P. 5, ¶ 66. However, the Ueyama et al. reference makes no mention of preparing a pasteurized packaged crabmeat product, let alone a pasteurized packaged crabmeat product having an adjusted volume of air for preventing undetected anaerobic bacterial growth.

Therefore, for the reasons expressed above, withdrawal of the rejections of claims 1-17 in view of the Ueyama et al. and Sugisawa et al. references is respectfully traversed.

Accordingly, it is submitted that the present application is in condition for allowance and formal notice thereof is respectfully requested.

Applicant hereby authorizes the Commissioner under 37 C.F.R. § 1.136(a)(3) to treat any paper that is filed in this application, which requires an extension of time, as incorporating a request for such an extension. The Commissioner is authorized to charge any fees required by this paper or to credit any overpayment to Deposit Account No. 20-0809.

Respectfully submitted,



Victor J. Wasylyna
Reg. No. 52,345

THOMPSON HINE LLP
P.O. Box 8801
Dayton, Ohio 45401-8801
Phone: (937) 443-6812
E-mail: IPGroup@ThompsonHine.com

448963.1